IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2839 of 2004
For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION
Versus
DIWANSINH KANUBHAI VAGHELA

Appearance:
1. Special Civil Application No. 2839 of 2004
MS MONALI H BHATT for Petitioner No. 1
MR SUBRAMANIAM IYER for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI
Date of decision: 15/10/2004
ORAL JUDGEMENT

In this petition, the petitioner has challenged the award dated 21.12.2002, passed by the Industrial Tribunal, Baroda, by which the Reference of the workman i.e. respondent herein, was partially allowed. It was directed that the services of the respondent herein be treated as permanent with effect from completion of 180 days of work after his appointment and he should be paid the benefits of time scale of pay with effect from 1.1.1999, considering the previous period for notional pay fixation.

2. The respondent who was working as a reliever

watchman had approached the concerned Industrial Tribunal, by filing the above mentioned Reference, in which he had contended that he is working as a watchman since 5.9.1980 and he is entitled to be made permanent after completion of 180 days of service as per Clause 20 of the settlement arrived at between the petitioner Corporation and the Union in the year 1994. He therefore prayed that he should be treated as permanent servant after 180 days of his initial appointment on 5.9.1980 and he should be paid the salary from the said date in the time scale of pay.

3. The petitioner Corporation resisted the prayer of the respondent and filed a reply before the Industrial Tribunal. It was contended inter-alia that the respondent was being engaged only as a reliever watchman when other regularly appointed watchmen were not available for duty. It was further contended that part-time employees, if possess the requisite qualifications, have to apply for regular appointment whenever the recruitment process is undertaken. It was pointed out that Clause 20 of the settlement arrived at in the year 1994 would not apply to the respondent. It was also pointed out that the respondent had filled-up the form for being selected on regular basis at the time of recruitment process, but considering his age of 44 years 8 months and 8 days on the relevant date, he was found to have crossed the upper age limit. In short, the petitioner Corporation had opposed the demand before the Industrial Tribunal.

4. The Industrial Tribunal, by its impugned order came to the conclusion that the respondent workman is entitled to be treated as permanent employee of the Corporation at the end of 180 days of service from the initial appointment. However, the Industrial Tribunal found that the workman would be entitled to receive the actual difference in salary only with effect from 1.1.1990, and that the period upto 31.12.1988 will be treated for notional pay fixation.

5. The Industrial Tribunal noted that the workman in his cross-examination was unable to state as to in which year would he have completed 180 days of service. The workman also admitted that he was called for interview in the year 1991. He also admitted that when he filed the Reference in the year 1999, his age was about 54 years.

6. Appearing for the petitioner, learned Advocate Ms. Monali Bhatt submits that the Industrial Tribunal erred in granting regularisation to the respondent. She

submits that Clause 20 of the Settlement in question would not apply in the facts of the present case. She submits that the Industrial Court could not have given directions for regularisation of the workman without considering the availability of the vacancies, the fulfilment of the Recruitment Rules by the respondent and also without going through the proper selection process. She relies on the Full Bench decision of this Court in the case of Amreli Municipality Vs. Gujarat Pradesh Municipal Employees Union, reported in 2004 (3) GLR 1841.

7. Appearing for the respondent workman, Shri Subrahmaniam Iyer submits that the Industrial Court has correctly come to the conclusion that the workman was required to be regularised. He points out that the Industrial Tribunal has confined the monetary impact of the regularisation to 1.1.1999 only, and the past period is to be considered only for notional pay fixation. He submits that in exercise of powers under Article 227 of the Constitution of India, this Court should not interfere with the award of the Industrial Tribunal since the Tribunal has not committed any perversity.

7.1 He points out that the learned Single Judge of this Court in an unreported judgement dated 27.1.2000, rendered in Special Civil Application No. 393 of 2000 in the case of G.S.R.T.C Vs. Bharatkumar Jashwantlal Rao, has considered the effect of the said Clause 20 of the Settlement in question and the case of the present respondent being similar to the above mentioned case, the ratio of the said decision would squarely apply to the facts of the present case also. He points out that the Division Bench of this High Court by its judgement dated 12.3.2001 in Letters Patent Appeal No. 905 of 2000 has upheld the decision of the learned Single Judge.

8. From the material on record it can be seen that the respondent workman was engaged only as a reliever watchman to substitute for the absence of regularly recruited watchmen. It is not the case of the respondent also that he was selected through regular selection process and placed in the select list. It is not even the case of the respondent that his name was placed in the select list of such casual workmen who would be offered work when the regular employees in the organisation are absent. In that view of the matter, it is difficult to see how Clause 20 of the Settlement arrived at between the petitioner Corporation and the Union in the year 1994 can be applied in case of the respondent herein. From the bare reading of the said Clause 20 which is reproduced in the statement of charter

of demands of the workmen before the Industrial Tribunal it is apparent that the same had application to those persons who are selected and placed in the select list, and who have completed more than 180 days of work are to be brought over to the regular establishment and were to be given the pay-scale in the time-scale of pay with all other attendant benefits. In that view of the matter, in my view Clause 20 of the said Settlement could not have covered the case of the respondent herein, since it is neither the case of the respondent workman that he was selected and placed in the select list, nor even it is the case of the respondent that he was placed in the select list of substitute watchman. Nowhere has the respondent contended that he was called for the interview and placed in the select list before being engaged as a reliever workman in the year 1980.

8.1 In this view of the matter, the decision of the learned Single Judge of this Court in the case of GSRTC Vs. Bharatkumar Jashwatlal Rao (supra) would not apply to the facts of the present case, where this Hon'ble Court was pleased to make following observation:-

> "..... Both the sides have taken the situation for granted, and the entire matter was contested before the Tribunal on the basis that the regular watchmen, on account of whose absence such reliever watchman came to be employed, were employees who were regular employees in a regular time scale. Secondly it was never a specific case put up by the petitioner before the Tribunal that the workman's name did not figure on the list of such reliever watchmen who would be offered employment as and when required. It is obvious that a select list, in the context of the present circumstances, could only mean a select list of such casual workmen who would be offered work when the regular employees in the regular time-scale happen to be absent. Thus, the list of such daily wagers or a list of such casual workmen would be the select list in the context of the relevant clause (Clause 20) of the settlement in question which has been discussed and relied upon in the impugned judgement and award."

8.2 In the Full Bench decision of this Court in the case of Amreli Municipality Vs. GPME Union (supra) the Full Bench has, in paragraph 12.1, observed as under:-

> "After considering the decisions cited before us,

the following principles emerge:

(A) No regularisation or permanency can be effected de hors the statutory provisions or the guidelines.

(B) Long service put in by the workmen itself may not be a ground to regularise services of ad hoc/temporary workmen against the sanctioned set-up without following statutory procedure of recruitment. At the most, Labour Court/Industrial Tribunal can issue direction for consideration of absorption subject to availability of posts on the establishment.

(C) To avoid nepotism and corruption, no back-door entry in service;

(D) Financial capacity of the local body to have additional burden is a relevant consideration to be kept in mind while ordering regularisation or absorption."

8.3 In the recent decision, the Hon'ble Supreme Court in the case of A. Umarani Vs. Registrar, Co-operative Societies and others, reported in 2004 AIR SCW 4462, after considering number of decisions on the question of regularisation of Government servants, observed that when appointments made without notifying vacancies to Employment Exchange and in violation of mandatory provisions of the Act and the Rules ignoring minimum qualifications, the State Government has no authority to direct regularisation of such appointments by issuing orders.

9. As noted above, nothing has been placed on record to point out as to the source of the respondent's initial engagement in the year 1980. Except for the fact that he was for the time engaged in the year 1980, there is no material produced by him to point out as to what legal procedure was followed before engaging him as a reliever watchman in the year 1980. Since it is not even the case of the respondent that his name was placed in the select list, neither Clause 20 of the Settlement in question, nor the decision of this Court in the case of GSRTC Vs.Bharatkumar Jashwantlal Rao (supra) would be governing the facts of the present case. In that view of the matter, I find that the Industrial Tribunal erred in directing regularisation of the respondent workman, that too with effect from 1980, and all consequential directions also therefore, must fail.

10. In the result, the impugned award of the Industrial Tribunal is quashed and set aside. The petition is allowed. Rule made absolute with no order as to costs.

(Akil Kureshi, J.)

*/Mohandas